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**Local Lodge S-76 of the International Association of
Machinists & Aerospace Workers, DL-1, AFL-
CIO and South Jersey Energy Service Plus.
Case 04-CB-083627**

November 8, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND GRIFFIN

The Acting General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by South Jersey Energy Service Plus (SJE) (the Employer) on June 21 and August 21, 2012, respectively, the Acting General Counsel issued a complaint and notice of hearing on August 29, 2012, against Local Lodge S-76 of the International Association of Machinists & Aerospace Workers, DL-1, AFL-CIO (the Respondent) alleging that it has violated Section 8(b)(3) of the Act. The Respondent failed to file an answer.

On September 24, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 28, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that the answer must be received by the Regional Office on or before September 12, 2012. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated September 14, 2012, notified the Respondent that unless an answer was received by September 21, 2012, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, SJE, a New Jersey corporation with its offices in Folsom, New Jersey, has been a New Jersey corporation engaged primarily in the residential installation and repair of heating and air-conditioning units and other appliance services.

During the 12-month period preceding issuance of the complaint, SJE, in conducting its business operations described above, received gross revenues in excess of \$500,000 and purchased and received at the warehouse goods valued in excess of \$50,000 directly from points outside the State of New Jersey.

We find that SJE is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions or acted in the capacity set forth opposite their respective names and have been agents of the Respondent within the meaning of Sections 2(13) and 8(b) of the Act.

Daniel J. Chmelko—International Business Agent

Laurence G. Powell—President since December 2010

Brian Askins—President until December 2010

Jeannie Abbott—Recording Secretary

Shawn Garrity—Former Shop Steward

Bill Urban—Former Shop Steward

The following employees of SJE (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Appliance service technicians, appliance dispatch & service representatives, installers, plumbers, helpers and parts order entry clerks hired after April 15, 2003, and appliance service technicians, AST inspectors, appliance dispatch service representatives and parts order entry clerks who transferred from South Jersey Gas on September 1, 2004.

At all material times, SJE has recognized the Respondent as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from January 15, 2005, through January 14, 2009.

At all material times, since at least January 15, 2005, based on Section 9(a) of the Act, the Respondent Union has been the exclusive collective-bargaining representative of the unit.

On about December 22 and 29, 2011, SJE and the Respondent reached complete agreement (the contract), containing the terms and conditions of employment of the unit. The contract was effective by its terms from October 27, 2009, through August 31, 2014.

On January 31, 2012, SJE emailed the contract to the Respondent and requested that the Respondent execute the contract.

Since about January 31, 2012, the Respondent has failed and refused to execute the contract.

Since about February 1, 2012, the Respondent has failed to respond to SJE's request that it execute the contract embodying the terms and conditions of employment agreed to with SJE, as described above.

CONCLUSION OF LAW

By failing and refusing, since about January 31, 2012, to execute the contract, and failing, since about February 1, 2012, to respond to SJE's request that it execute the contract, the Respondent has been failing and refusing to bargain collectively and in good faith with the Employer within the meaning of Section 8(d) of the Act in violation of Section 8(b)(3) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(b)(3) of the Act by failing, since about January 31, 2012, to execute the contract, we shall order the Respondent to execute and implement the contract and give retroactive effect to its terms.

ORDER

The National Labor Relations Board orders that the Respondent, Local Lodge S-76 of the International Association of Machinists & Aerospace Workers, DL-1, AFL-CIO, Williamstown and Pitman, New Jersey, its officers, agents, and representatives, shall

1. Cease and desist from

- (a) Failing and refusing to execute the complete agreement (the contract), reached with South Jersey Energy Service Plus (the Employer), on December 22 and 29, 2011, and effective by its terms from October 27, 2009, through August 31, 2014, containing the terms and conditions of employment of the following unit employees:

Appliance service technicians, appliance dispatch & service representatives, installers, plumbers, helpers and parts order entry clerks hired after April 15, 2003, and appliance service technicians, AST inspectors, appliance dispatch service representatives and parts order entry clerks who transferred from South Jersey Gas on September 1, 2004.

- (b) Failing and refusing to respond to the Employer's request to execute the contract.

- (c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Immediately execute the contract.

- (b) Give retroactive effect to the provisions of the contract.

- (c) Within 14 days after service by the Region, post at its business office and meeting places, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means.² Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

- (d) Within 14 days after service by the Region, deliver to the Regional Director for Region 4 signed copies of the notice in sufficient numbers for posting by the Em-

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

² For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

ployer at its Folsom, New Jersey facility, if it wishes, in all places where notices to employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 8, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to execute the complete agreement, the contract, reached with South Jersey Energy Service Plus, the Employer, on December 22 and 29, 2011, and effective by its terms from October 27, 2009 through August 31, 2014, containing the terms and conditions of employment of the following unit employees:

Appliance service technicians, appliance dispatch & service representatives, installers, plumbers, helpers and parts order entry clerks hired after April 15, 2003, and appliance service technicians, AST inspectors, appliance dispatch service representatives and parts order entry clerks who transferred from South Jersey Gas on September 1, 2004.

WE WILL NOT fail and refuse to respond to the Employer's request to execute the contract.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL immediately execute the contract.

WE WILL give retroactive effect to the provisions of the contract.

LOCAL LODGE S-76 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, DL-1, AFL-CIO